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10/662,599

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Bruce L. Kennedy

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EXAMINER

SMITH, PHILIP ROBERT

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRUCE L. KENNEDY

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Appeal 2009-006421  
Application 10/662,599  
Technology Center 3700

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Decided: May 25, 2010

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Before JENNIFER D. BAHR, STEFAN STAICOVICI, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Bruce L. Kennedy (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 19-31 and 46-49. Claims 1-18 and 32-45 have been withdrawn from consideration by the Examiner. Appellant's representative presented oral argument on May 12, 2010. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

## THE INVENTION

Appellant's invention relates to a device for video recording and image capture for recording medical procedures. Spec. 1, para. [0002].

Claim 19 is representative of the claimed invention and reads as follows:

19. A medical video instrument having touch screen control comprising:

a touch screen for entering control commands to control said medical video instrument;

said medical video instrument inserted into a body cavity and generating an image stream representative of the body cavity and displayed on said touch screen;

a processor for receiving said control commands and for generating control signals to operate said medical video instrument; and

a housing for enclosing said processor, said touch screen movable between a first position at least partially within a footprint of said housing and a second position extended from said footprint of said housing.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Winkler	US 6,411,851 B1	Jun. 25, 2002
Rosen	US 2002/0149706 A1	Oct. 17, 2002
Watai	US 2003/0060678 A1	Mar. 27, 2003
Beutter	US 2003/0076410 A1	Apr. 24, 2003

The following rejections are before us for review:

The Examiner rejected claims 19-31 and 46-47 under 35 U.S.C. § 103(a) as unpatentable over Beutter and Winkler.

The Examiner rejected claim 48 under 35 U.S.C. § 103(a) as unpatentable over Beutter, Winkler, and Watai.

The Examiner rejected claims 19 and 49 under 35 U.S.C. § 103(a) as unpatentable over Beutter and Rosen.

### OPINION

Claim 19 requires a “touch screen movable between a first position at least partially *within a footprint* of said housing and a second position *extended from said footprint* of said housing.” *See* App. Br., Claims App’x. Emphasis added. According to the Examiner:

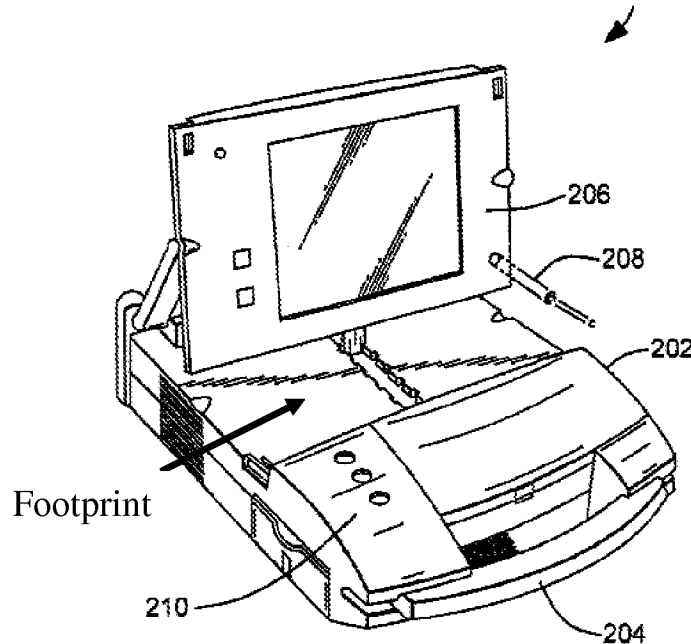
Winkler discloses that said touch screen is movable between a first position at least partially within a footprint ("folds down in a closed position") of said housing and a second position ("plurality of possible open positions") extended from said footprint of said housing (12/10-27).

Ans. 5.

Appellant argues that, “folding the screen [of Winkler] downward (face down) against an outer surface of the housing is not positioning the screen within [a footprint of] the housing.” Reply Br. 3.

Appellant’s Specification does not expressly define the term “footprint” or otherwise indicate that this term is used in a manner other than its ordinary and customary meaning. At the outset, we find that an ordinary and customary meaning of the term “footprint” is “the area on a surface covered by something.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10<sup>th</sup> Ed. 1997). In this case, as shown below in amended Figure 6 of Winkler, it is our finding that the upper surface of Winkler’s housing 202, that holds the touch screen 206 when not in use, constitutes a “footprint.” *See also* Winkler, col. 12, ll. 11-21.

Amended Figure 6 of Winkler is reproduced below:



Amended Figure 6 of Winkler depicts a portable programming device including a touch screen 206 in an open position, a housing 202, and a “Footprint” area located on the upper surface of housing 202.

In deciding the issue of whether Winkler’s touch screen 206 satisfies the limitation in claim 19 alluded to by Appellant, we must consider that limitation within the context of the claim language in its entirety. We agree with the Examiner that when the touch screen 206 of Winkler is closed (first position) it is located “within a footprint” of housing 202. However, when the touch screen 206 is in an open position (second position) we do not find that it *extends from the footprint* of the housing 202, as also required by claim 19. When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). We construe the words “*extended from said footprint of said housing*,” as called for in claim 19, to mean extending out from the vertically extending boundaries of the footprint of the housing. In this case, pointing to Figure 15 of Appellant’s Drawings, the Specification describes screen 102 as “extended out” from the plane of the housing, that is, extending out from the vertically extending boundaries of a footprint of the housing. Spec. 17, para. [0055] and fig. 15. In contrast, the touch screen 206 of Winkler does not “extend out” from the plane of the housing 202 when in an open position. *See* Winkler, amended fig. 6, *supra*. Rather, the touch screen 206 when in the open position (second position) is located within the boundaries of the plane of housing 202 but merely shifted

upward. In other words, the touch screen 206 of Winkler, when in an open position, is still within the footprint of the housing 202 because it is located within the vertically extending boundaries of the footprint. As such, the touch screen 206 of Winkler does not extend out from the plane of the housing 202, that is, does not extend from a footprint of the housing.

In conclusion, Winkler does not disclose a touch screen that is movable between a first position within a footprint and a second position extended from said footprint, as required by claim 19. Hence, the rejection of claim 19, and its dependent claims 20-31 and 46-47, under 35 U.S.C. § 103(a) as unpatentable over Beutter and Winkler, cannot be sustained. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim dependent therefrom is nonobvious).

With respect to claim 49, the disclosure of Watai does not remedy the deficiency of Beutter and Winkler as described above. Accordingly, the rejection of claim 49 over the combined teachings of Beutter, Winkler, and Watai likewise cannot be sustained.

Lastly, with respect to the rejection of claims 19 and 49 over the combined teachings of Beutter and Rosen, Appellant has not provided any substantive arguments against the Examiner's rejection. Therefore, we summarily affirm the Examiner's rejection of claims 19 and 49 under 35 U.S.C. § 103(a) as unpatentable over Beutter and Rosen.

## DECISION

The Examiner's decision to reject claims 19-31 and 46-47 under 35 U.S.C. § 103(a) as unpatentable over Beutter and Winkler is reversed.

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The Examiner's decision to reject claim 48 under 35 U.S.C. § 103(a) as unpatentable over Beutter, Winkler, and Watai is reversed.

The Examiner's decision to reject claims 19 and 49 under 35 U.S.C. § 103(a) as unpatentable over Beutter and Rosen is affirmed.

AFFIRMED-IN-PART

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